

March 16, 2004

Chairman Michael K. Powell and  
Commissioners Kathleen Abernathy,  
Michael Copps, Kevin Martin and  
Jonathan Adelstein  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**Re: Multicast Carriage (CS Docket No. 98-120)**

Dear Chairman Powell, Commissioner Abernathy,  
Commissioner Copps, Commissioner Martin, and  
Commissioner Adelstein:


We are the Chairs of the ABC, CBS and NBC television affiliates associations. Our associations represent some 600 local television stations. One of our principal goals is to preserve the benefits of localism whether in connection with the national ownership cap, the re-authorization of SHVIA, or digital transition issues. The attached article from the Columbia Journalism Review makes clear that digital technology will enable local broadcasters to provide their communities with a mix of HDTV and locally-oriented multicast services that will greatly enhance localism. The article goes on to point out that the major obstacle to the public's receiving the benefit of these services is cable's refusal to carry them based on its bottleneck power and competitive incentives.

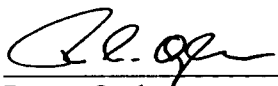
Our three organizations, along with our umbrella group, the Network Affiliated Stations Alliance (NASA), have submitted declarations or met with the FCC or both to describe broadcasters' current and planned multicast programming. We have shown that cable carriage is essential if these valuable multicast services are to have an opportunity to succeed. We have also demonstrated that cable systems have been very reluctant to grant multicast carriage voluntarily and have been quite explicit in denying carriage where the service is directly competitive with their own service. Moreover, a mixed HDTV/multicast program strategy may be necessary to local broadcasting's future vitality in a multichannel market environment.

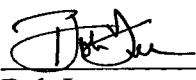
We believe the article makes a compelling case for a multicast carriage requirement. What it doesn't explain is that, in addition, there is no First Amendment downside to a multicast carriage requirement. As a result of the digital transition, cable systems would not be further burdened by a multicast carriage requirement. In fact, the amount of their capacity devoted to carriage of broadcast channels will be cut in half, and programmers unable to crack cable system line-ups may find new outlets for their offerings on broadcasters' multicast

channels. The Commission should rule now that cable systems may not invade broadcasters' digital signals and strip out multicast program services.

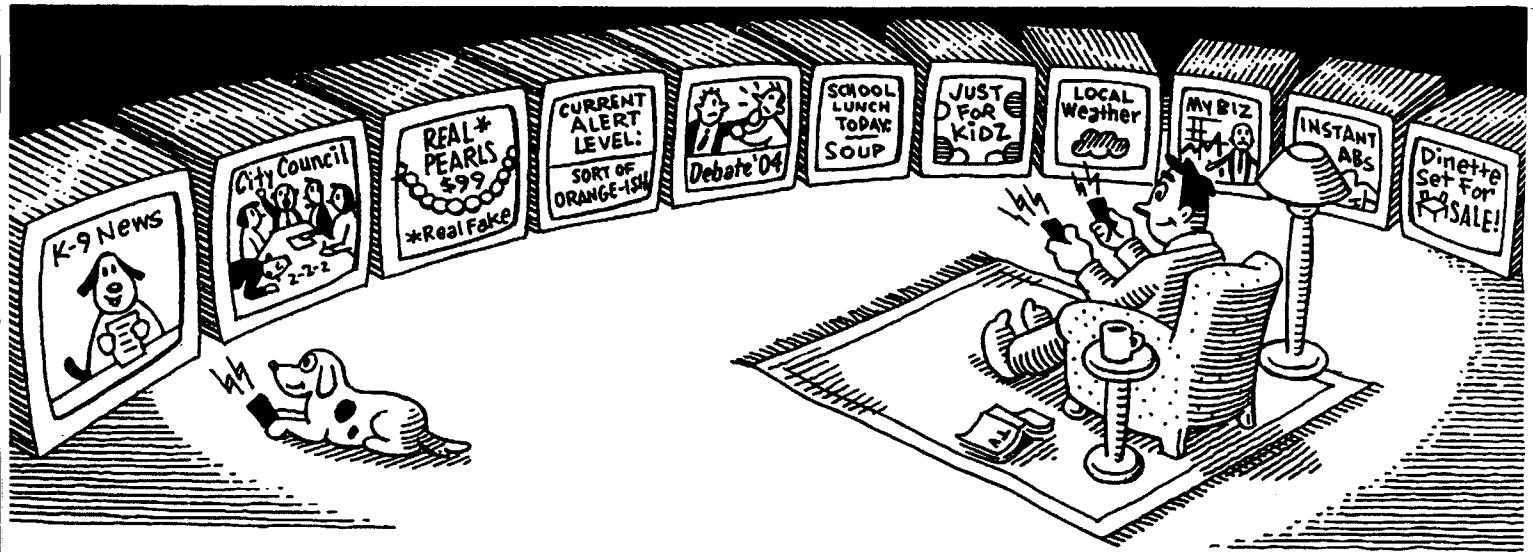
Respectfully submitted,

  
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Deb McDermott  
Chair of Board of Governors,  
ABC Television Affiliates  
Association  
Enclosure

  
\_\_\_\_\_  
Roger Ogden  
Chair of Board of Directors,  
NBC Television Affiliates

  
\_\_\_\_\_  
Bob Lee  
Chair of Board of Directors,  
CBS Television Network  
Affiliates Association

cc: CS Docket No. 98-120



# TV ON STEROIDS

So Long to Analog Broadcasting and Hello to Digital,  
Which May Spell Good News for Viewers — and Plenty of It

BY NEIL HICKEY

**S**ince the dawn of television, almost six decades ago, every TV station in America has had the capacity to beam out just one program at a time — *Gunsmoke* or *The Huntley-Brinkley Report* or *Survivor* or *60 Minutes*. That was then; welcome to now: the Digital Era of broadcasting. The so-called analog, one-channel version of television will soon be as archaic as a 1950 Studebaker. Since the passage in 1996 of a new Telecommunications Act, all of the country's television stations are allowed to reach their viewers on as many as six channels — simultaneously! Benefits for the public have been slow in coming, but suddenly “multicasting” — that's the hot new word — is on the lips of everybody in TV land.

Take WRAL in Raleigh, North Carolina, for example, a pioneer in the new age of broadcasting. Last year, on one of its new digital outlets, a service called NewsChannel, the station aired live, full coverage of the murder trial of a well-known local figure accused, and eventually convicted, of killing his wife. It was a story of broad local interest, but one for which the station would not have preempted popular CBS shows on its lone analog channel.

Other examples:

■ In Fresno, California, station KFSN has been multicasting for a year and a

half, using one of its channels for news, public-affairs shows, and political debates. During the California recall election, it employed the channel for continuous, real-time election results. ABC, which owns KFSN, plans to create similar channels in the nine other cities where it owns stations.

■ When CBS canceled coverage of important NCAA basketball games in April 2003 to report the Iraq war, WKMG in Orlando, Florida, shifted the games to one of its multicast channels for fans who needed their basketball “fix.”

■ At its stations in Indianapolis and Fort Wayne, Indiana, LIN Television Corp. (it owns twenty-six other TV outlets) is airing a local, twenty-four-hour weather channel. For the last four years, during the NCAA's March Madness tournament, those stations have aired four games simultaneously on their multicast channels.

■ *The New York Times*, which owns eight TV stations, has told the Federal Communications Commission that it wants to forge “super local” news channels to beam zoned coverage at small, discrete geographic areas within its stations' signal areas; and to sell advertising to small businesses that currently can't afford commercials on the main channels.

■ PBS, with its 349 affiliates, is a major player in digital multicasting, sending informational and educational programs 24/7 on multiple channels simultaneously. One of its station groups, South Car-

olina Educational Television Network, offers gavel-to-gavel reporting on the South Carolina General Assembly. A cluster of public stations in Idaho, Nevada, Utah, and Wyoming operate a mini-network delivering news of interest to westerners. In January the Knight Foundation gave PBS \$200,000 to help set up a new digital channel for news and public affairs. Hodding Carter III, president of the foundation, said he expected that PBS would produce “sustained electronic journalism serving the public interest” at a time when “sleaze repeatedly trumps substance” in much of broadcast news.

A new and potentially promising day has dawned. This tectonic shift will profoundly transform the TV news service we've known, and sometimes loved, since the 1940s. Besides local twenty-four-hour all-news and all-weather channels, stations will be able to devise local versions of C-SPAN covering state legislatures and city councils, public hearings, community board meetings, court trials, school board sessions, school lunch menus, school closings, public event schedules, updates on terror alert levels, and disaster warnings, along with documentaries on issues of local concern, free airtime for office-seekers, children's news and educational shows, and almost anything else station owners can dream up — with simultaneous translation into other languages for the benefit of local non-English-

speaking minorities. Then there's the datacasting of text: stock market quotes, sports statistics, classified advertising, radio and TV program schedules, and even electronic newspapers. Not all multicasting will be public-spirited: stations also will be squeezing as much profit as possible from those new channels by selling advertising on some of them, and by airing infomercials, home shopping, pay-per-view movies, and local versions of HBO that viewers will have to pay for.

But local news and public affairs could be big winners. "The inherent characteristics of the digital broadcasting system will change broadcast news forever," the Radio and Television News Directors Foundation decided in a 1998 study.

**R**aleigh's WRAL was the first station in the U.S. to go fully digital. John Greene, its vice president for special projects, says that multicasting gives his station "greater versatility and flexibility, and an opportunity to do much more localism." WRAL's twenty-four-hour NewsChannel went on the air August 1, 2001, and since then has aired numerous election specials; live coverage of controversial hearings on the FCC's media ownership rules; live broadcasts during the Iraq war of United Nations Security Council meetings and related White House and Pentagon news conferences; hearings of the North Carolina supreme court; opening ceremonies of the North Carolina state fair; and scores of other stories of particular interest to local viewers.

John Tupper, past chairman of the Fox board of affiliates and owner of KNDX in Bismarck, North Dakota, says that "the sky's the limit" in thinking up ways to better serve local audiences with digital technology. John Lawson, president of the Association of Public Television Stations, calls multicasting "public television's second chance." Public stations typically haven't attracted large audiences on a regular basis, he points out, "but digital allows us to fulfill the promise that the founders of public television had back in the 1950s, namely to provide a wide range of services to people who may be underserved."

Despite such optimism, it's still 5 a.m. in the Digital Era. Among most broadcasters, promise exceeds performance so far. About 1,200 of the country's 1,600 television stations have made the expensive transition to the digital mode. Roughly 215 stations currently are mul-

## HOW WE GOT DIGITAL: A Quick History

**A**ll the current arguments about broadcasting's new era — and what's in it for the public — began in 1996 when the government ordered every television station in the U.S. to switch from analog to digital transmission over a period of years. To make the transition possible, all stations received, free of charge, an additional channel with the option of using it for high-definition television (HDTV) or of slicing that valuable bit-stream into a half-dozen standard-definition (SD) channels — or a varying combination of both.

Politicians, media theorists, and consumerists of left, right, and center quickly demanded a payback from the TV people — in the form of public interest programs — in return for the gift of publicly owned spectrum that could have earned the U.S. Treasury up to \$70 billion on the auction market. Vice president Al Gore sponsored a blue-ribbon panel — some of whose twenty-two members were broadcasters — with the fancy title Advisory Committee on Public Interest Obligations of Digital Television Broadcasters. But the committee's report, tortuously arrived at, was inconclusive and wishy-washy, recommending only a "minimum commitment to public-affairs programming . . . with some emphasis on local issues and needs." Compliance would be voluntary and impose no "undue burden" on the broadcasters.

The report was filed away and hasn't been heard about since. But the "multicast must-carry" wrangle recently has heated up the debate about exacting a few ounces of public-service flesh from broadcasters in return for what a former FCC chairman called "beachfront property on the Cyber Sea."

— N.H.

ticasting, according to Decisionmark Corporation, an Iowa-based media technology company. More than 130 are offering news on those collateral channels. High-definition (HDTV) television sets — those equipped to receive the new channels — so far have reached only about five million of the nation's 106

million households, but sales are zooming. The public will buy almost six million digital sets in 2004, says the Consumer Electronics Association, 8.3 million in 2005, 11.9 million in 2006, and 16.2 million in 2007. Many consumers who still own good old-fashioned, soon-to-be-obsolete, analog sets (which a few manufacturers already have stopped making) have bought cheap (under \$100) converter boxes that let them view the multicast channels.

Meanwhile, all the bright promise of multicasting's future could come to a crashing halt, depending on who wins a battle of the behemoths between broadcasters and cablecasters. Those two powerful industries are throwing elbows at each other over how all these new channels will reach the public. Broadcasters want the FCC to force cable operators to carry *all* the new multicast channels, instead of just the one-per-station they've been retransmitting for decades. That debate bears the unwieldy moniker "multicast must-carry" and both camps are calling it a matter of life and death for their future good health. (Despite its importance, hardly a soul among the public is aware of the controversy; mainstream media have typically ignored it as being too arcane for normal human beings.)

The antagonists: in this corner, the National Association of Broadcasters, often called Washington's most powerful lobby. It wants the FCC to decree that local cable companies be obliged to carry most of the broadcasters' multicast channels (not the infomercials or pay-per-view streams) because otherwise viewers will have to revert to old-style antennas and the promise of multicasting will never be realized.

"We think, as an industry, that there will be an absolute explosion in all types of programming, including public-interest programming, if digital must-carry is adopted by the FCC," Dennis Wharton, an NAB vice president told CJR. "The possibilities are huge. I don't think there's any question that many broadcasters will be willing to use their multicast spectrum for political debates, city council meetings, mayoral elections." As for the pending FCC ruling: "If the FCC is truly interested in the public interest, broadcasters will win this one on the merits."

And in the other corner: the National Cable Television Association, another powerhouse Washington lobby. It believes that the government shouldn't go around telling a major media industry what it can and cannot put on its wires

into the 70 percent of U.S. homes that pay for cable service. That offends their First Amendment rights, say the cablers. "We favor making these decisions based on marketplace forces, and letting the negotiations happen at a business-to-business level," says Brian Dietz, a cable association spokesman. (Cable already carries more than 300 multicast channels nationwide, the result of friendly deals between stations and local cable companies. WRAL in Raleigh is an example.) An FCC mandate would give broadcasters "a free ride on cable," Dietz says, and they might use the new channels for a lot of programs that cable subscribers don't want to see. There are now more than 300 cable networks, he points out. Adding scores of others in every market would only confuse and irritate cable viewers, and might prevent the birth of worthy new cablenets in the future.

All this, as usual, is less about principle than about money; it's an aspect of the love-hate synergy that has marked the two industries' relationship for more than thirty years. TV station owners see a potential pot of gold in advertising (and other) revenue from the digital channels, but know they'll never attain it without cable's cooperation — either voluntary or forced. Cable folk perceive the birth of a monster competitor that's dangling all the right carrots now, but which may also fabricate free, over-the-air, advertiser-supported streams of movies and ancient sitcoms and old game shows to compete with cable's movies and ancient sitcoms and old game shows.

And so the game is afoot, with the FCC expected to rule in the next few months. The volume of public-service multicasting now available to viewers is a mere drop in the digital bucket compared to what the broadcasters have sworn they'll create — not hundreds of multicast channels, but many thousands nationwide — if only the FCC will vote their way. In filings to the commission in January, networks and their affiliates pounded home their case. "These opportunities for additional services cannot succeed," says the NBC affiliates' bulky brief, unless cable passes them along to their subscribers. Without that, broadcasters will "withhold or withdraw" the necessary investment because cable operators "occupy a bottleneck position" and can "snuff out" the bright promise of multicasting.

Until late last year, the smart money was betting that the broadcast people would emerge victorious. And that's still the safest bet. But a third pugilist has now

## FOX'S DIGITAL GRAB

**T**he three old-line networks — ABC, CBS, and NBC — are consulting with their affiliated stations about how best to utilize the multicast channels. So is Fox, but that Murdoch-owned network has a different (some say larcenous) approach. Fox has written provisions into its contracts with affiliates giving it 100 percent control over the stations' multicast capacity. Fox stations can forfeit their extremely valuable rights to the network programs (*The Simpsons*, *Cops*, big league sports) if they don't agree to the network's demand.

Some legal scholars say that those contracts are unlawful on their face. The Washington law firm of Covington & Burling, on behalf of the Network Affiliated Stations Alliance, filed a "petition for inquiry" with the FCC arguing that Fox's insistence on "absolute dominion" over a station's digital real estate frustrates the licensee's obligation to address local concerns. (So far, the FCC hasn't ruled on the petition.)

"It's a brazen thing to do," Jonathan E. Blake, a Covington & Burling attorney told *CJR*. "A station owner's judgment could be overruled about what's best for the public in that community."

We asked Fox what it had to say about its contract arrangement with affiliates. "Absolutely nothing," said Scott Grogan, a spokesman, in a phone interview. "It's a private contract and there would be no reason to discuss it with anyone."

— N.H.

entered the ring: a coalition of consumer activists — many of the same people who fought the FCC to a standstill last year on the rowdy media ownership dust-up (see "Tripping up Big Media," *CJR*, November/December 2003). Their plea: Don't give broadcasters automatic access to cable — worth billions of dollars to them — without a payback to the public, a quid pro quo that they'll deliver "verifiable and quantifiable" amounts of public-interest programming in return.

The activists fear that broadcasters will promise anything to gain access to those crucial cable homes, and having got it,

will conveniently forget about their pledges. "They promise a lot but they have a terrible record of keeping promises," says Jeffrey Chester, executive director of the Center for Democratic Media. "But on this issue they'll have to blink and swallow some castor oil to get what they want." He's against handing the broadcasters the key to a "digital Fort Knox" free of charge. So is J.H. Snider, a senior research fellow at the New America Foundation Spectrum Policy Program, who favors either new and verifiable public-interest obligations, or a 5 percent spectrum fee on broadcasters' gross revenue, with the money going to the funding of public-interest programs and to help low-income people buy converter boxes. Meredith McGehee, president of the Alliance for Better Campaigns, says she sees this debate as a chance "to engage the question: Are we going to have meaningful public-interest obligations or not. That's the heart of it — citizens being able to get from television the information they need to be informed and engaged voters."

A similar view comes from the Consumer Federation of America, whose report on the squabble says that the shift to digital broadcasting, which is mandated by the government, "represents a major change in the commercial nature of the industry that requires aggressive policy to promote the public interest"; and that obligations should be imposed on the people who stand to benefit the most, namely broadcasters.

Unsurprisingly, broadcast people hate the notion of the government's telling them what to put on their multicast channels. Would they accept any mandated obligations at *all* in return for multicast must-carry? "That's a good question and one we're struggling with right now," said a senior broadcast official who requested anonymity. "There are serious First Amendment implications if the FCC specifically writes into the rules types and percentages of programming that we have to create." He noted that, ironically, local cable companies also will wrap themselves in the First Amendment if the commission tries to force them to carry the new channels on their wires.

Meanwhile, on stations like Raleigh's WRAL, the public is getting the merest taste of what the Digital Era holds for them. The U.S. government, as usual, can either be part of the problem or part of the solution in getting the best deal for the people. ■

Neil Hickey is *CJR's* editor at large.